The San Diego Union-Tribune.

UNION-TRIBUNE EDITORIAL

Slow down, states

U.S. official: Employer mandates break law

May 25, 2007

The federal government has a message for California, Pennsylvania, Illinois and other states now considering requiring businesses to either provide health benefits or pay a fee to the state government to provide such benefits: Not so fast.

In an telephone interview, a senior official with the U.S. Department of Labor said a 1974 federal law – the Employee Retirement Income Security Act – blocks such state action.

"It is a fundamental tenet of ERISA pre-emption that states may not mandate ERISA plan benefits outside the context of insurance regulation," the official said. "The Supreme Court has been particularly careful to guard against state laws that directly regulate benefit structures or plan administration."

Now that the federal government has weighed in, Gov. Arnold Schwarzenegger, Assembly Speaker Fabian NÚñez and Senate President Don Perata must finally acknowledge that there is a strong chance their health initiatives are illegal. Legislative hearings should be held immediately to scrutinize the legality of employer mandates. If the hearings confirm the view of the federal government, then any state strategy to require employer mandates must begin with an effort to persuade Congress to amend ERISA.

Unfortunately, the legal advice the governor has received on this issue has been strikingly bad. In the past 10 months, a federal court and a federal appeals court have both invalidated a Maryland law because it included an employer mandate. Yet in March, Andrea Lynn Hoch, the governor's legal affairs secretary, insisted that "Maryland's plan was rejected in court over concerns that it seeks to dictate health care choices to a single employer."

Yes, the Maryland law was written so narrowly it only would have covered Wal-Mart. But that is not why it was thrown out, as the appellate ruling made plain: "The act thus falls squarely under [the] prohibition of state mandates on how employers structure their ERISA plans."

The governor's staff has also contended that the Maryland case is irrelevant because a decision of the 4th U.S. Circuit Court of Appeals "is not binding on California." But U.S. Supreme Court ERISA decisions are, of course, binding, and justices have explicitly rejected benefit mandates as violating ERISA – including in a landmark case involving a California oil company.

The fact is ERISA has a 33-year winning streak in defeating state employer mandates – because such mandates violate the central goal of ERISA: sparing employers from having to adjust their benefit plans to reflect the whims of 50 state legislatures.

Yesterday, we asked the governor and other state leaders to react to the U.S. government's warning about employer mandates. The reaction was disappointing.

NÚñez aide Steve Maviglio dismissed the federal government's view as a partisan ploy by the

Bush administration – even though the Clinton administration had the same view of ERISA. (In the mid-1990s, the National Governors' Association concluded that state health reforms were impossible without changes in the law.)

We got no response from the governor, Perata nor Attorney General Jerry Brown.

Only Assembly Republican Leader Mike Villines stepped up. "Of course we should have hearings on this. ... Can we actually do this? Does [pushing for an illegal law] make sense?"

We understand why health reformers are excited about the momentum they've built up in California and elsewhere in recent years. But it is folly to pursue a reform that breaks federal law. It is high time this basic bit of common sense took hold in Sacramento.